

ТРУДОВОЕ ПРАВО, ПРАВО СОЦИАЛЬНОГО ОБЕСПЕЧЕНИЯ

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THE UKRAINIAN CHALLENGE: SOME ISSUES ON LABOR MIGRATION AND ITS LEGAL REGULATION

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SUMMARY

This article deals with the issue of labor migration in Ukraine and its legal regulation. The reasons of labor migration in Ukraine and its rates given by the state authorities of Ukraine and international organizations are analyzed in article. The legal provisions concerning legal status of migrant- workers are singled out and suggestions to improve relevant regulation in this area are submitted.

Key words: globalization, employment, labor migration, migrant-worker, legal regulation.

АНОТАЦІЯ

Стаття присвячена питанню трудової міграції в Україні та її правовому регулюванню. У статті аналізуються причини трудової міграції в Україні, подається статистика державних органів виконавчої влади України та міжнародних організацій щодо показників трудової міграції. Аналізуються правові положення щодо правового статусу працівників – мігрантів та подаються пропозиції щодо удосконалення правового регулювання в цій сфері.

Ключові слова: глобалізація, зайнятість, трудова міграція, працівник-мігрант, причина трудової міграції, правове регулювання.

Statement of the problem. Since, labor migration is an essential component of the globalization processes, international and national safety faces a serious challenge. According to the ILO, rapid growth of the international goods and services exchange is a key aspect of the labor market globalization. Under the influence of these and some other factors some general approaches to the regulation of labor markets are formed. One could argue that in our contemporary world, the preconditions for creating an integrated global model of the labor market are formed. Formation of the international labor market is an indication that the integration processes taking place not only in the economic and technological spheres, but affecting social and labor relations, which are increasingly becoming global.

Goals and objectives of article. As a result, large masses of migrants-workers find themselves in a vulnerable legal position due to the fact that the labor market is not always supported by the syncing interstate measures in the field of migration management. Ineffectiveness of international legal regulation of labor migration is also reflected in the growth of illegal and criminal movements and employment of migrant workers in the shadow economy.

The main material. The fact is that Ukraine, as a developing country with a weak economy makes its first steps to the relevant legal regulation of labor migration issue. Most indicators of social and economic development are still far from European standards; gap in wages in Ukraine and foreign countries remains significant,

prompting Ukrainian citizens to seek a work abroad. We can say that labor migration has both positive and negative traits. Among positive features the voltage reduction on the local labor market and the welfare of households of migrants are usually named. In addition, prolonged exposure in developed countries promotes market awareness, assimilation of values and norms of a civilized society. However, there is a problem of migrant workers protection from the arbitrariness of employers and intermediaries; there is a risk of getting in inhuman conditions of work or to become a victim of traffickers.

Thus, P.P. Mazurok [1] stresses that among the measures which help to overcome negative for Ukraine globalization processes and trends, particular attention must be paid to the state legal regulation of employment and the labor market in the following directions: the necessity to accelerate the process of economy socialization and institutionalization, to ensure sustainable economic growth and quality of life. Entering the national economy in the field of market transformation and development of open economic system require special attention to the content, current trends and consequences of globalization. P.P. Mazurok points out that the emergence of transnational corporations, the unification of management standards and regulations and others forms of globalization determine, to some extent, direction, character and development dynamic parameters of almost all countries. However, this effect is rather controversial and varied as it depends on the level of social and economic

development of the certain country and its ability to handle new forms and methods of development efficiently.

The European integration course of Ukraine offers new opportunities for the labor interrelationships development both with the EU member states and other countries. Primarily, the cause of European integration aspirations of Ukrainian society is to improve the life of every individual and the protection of his rights and freedoms, including labor rights.

As it stated in the report of the World Commission on the Social Dimension of Globalization “A fair globalization – Creating opportunities for all” the world has committed itself to a number of principles and values, contained in the treaties and declarations that are part of the United Nations system [2]. Key among these are: respect for human rights, including economic, social, cultural, civil and political rights; fairness; solidarity; and ecological sustainability. And such values include the commitment to fight discrimination, ensure equality of the sexes and eradicate poverty; they underpin democratic societies and are essential for an open and effective market economy. That is why, P.P. Mazurok [3] singles out that the question is not simply to “adjust” the rules of someone else’s game for the course of European integration as it is, but in the effort to protect the domestic labor force from the social, economic and political risks of globalization. This follows from the meaning of the provisions of the Ukraine’s Constitution, where a person, its life and health are recognized as a highest social value.

Rates and reasons of labor migration in Ukraine.

The primary objective of the labor migration surveys is to determine its scale. Since the proclamation of independence in 1991, Ukraine has exported labor force in large scales. Unfortunately Ukraine’s current administrative data sources and regular examinations do not provide reliable information about the labor migration processes.

For example, the statistical record form TM-1 “Report on the number of Ukraine’s citizens who are temporarily working abroad” (data collected by the State employment center) contains data only about those Ukrainian migrant workers who were employed through formal intermediaries; there were 56,5–80,4 thousands of such workers in 2005–2008 respectively [4, p. 24].

As it is stated in the above mentioned report, data on the State Border Service as to the state border crossing are useless for several reasons. Firstly, these data reflect only the number of border crossings but not the number of persons; this means that the same person may be recorded multiple times. Secondly, these data do not distinguish migrants from the general mass, since the real purposes of persons who cross the state border often differ from the declared ones. Information obtained by the consular services of the Ministry of Foreign Affairs of Ukraine as to the number of Ukraine’s citizens who are taken on the consular registration reflects not the number of labor migrants but the number of persons who are permanently residing abroad, keeping the Ukraine’s citizenship in general.

In 2008 for the first time, the general complex survey as to the labor migration in Ukraine was carried out by the Ukrainian Centre for Social Reforms and was supported by the State Statistics Committee. According to its report in 2009, the number of Ukrainian citizens who crossed the state border at least once, during the period from 2005 till June 2008, in search of jobs amounted to nearly 1,5 million. This figure constitutes 5,1% of the total capable labor force [5].

According to the report “Migration in Ukraine: A country profile 2008”, the overall stock of Ukrainian migrants working abroad after 1990 ranged from 0,8 to 7 million persons. For instance, as a result of a nationwide sociological survey of the Institute of Sociology at the National Academy of Science of Ukraine, 15,7 per cent of Ukrainian families have had at least one or more members with the experience of temporary labor migration [6, p. 27]. It is noted in the report that estimates by the Ukrainian Parliament Commissioner for Human Rights suggest that up to seven million Ukrainians work abroad. The latest International Labor Organization (ILO) survey reveals about 780,000 Ukrainians labor migrants abroad (about 3,5–4% of the total labor force). These numbers sharply contrast with much lower official statistics on labor migration provided by State Statistics Committee.

Interview carried out by GfK company in 2006 (ordered by International Organization of Labor) produced the following result: 10,2% of families had, at least, one family member who gained income abroad. Taking into account the average family size, authors of the survey suggested that about 1 mln people worked abroad at the moment of interview. It implies that total number of Ukrainian labor migrants is higher because of the seasonal character of migration [7].

Regardless of the different estimates of the scales of labor migrations out of Ukraine, all of them reflect that labor migration is a common phenomenon and it provides employment and additional sources of income for many Ukrainians. Nevertheless, the structure of employment of labor migrants, given in the report of IOM, indicates that they are usually engaged in low-skilled work and their actual employment does not really depend on the relevant education level.

International migration is often explained by a basic push-and-pull model: The economic conditions, demographic pressures, and unemployment usually are the “push factors” in the sending countries and in return higher wages, demand for labor, and family reunification are the “pull factors” in the migration receiving countries.

Push factors of migration, identified by World Bank (2006), are: poverty, unemployment, low wages, high fertility rates, lack of basic health and education, political conflict, insecurity, violence, poor governance, corruption, human rights abuses, social and cultural discrimination.

Pull factors of migration are: prospects of higher wages, potential for improved standard of living, personal

or professional development, safety and security, political freedom, family reunification, ethnic (diaspora migration) homeland, freedom from discrimination [9].

Among the main reasons which motivate Ukrainians to seek job abroad are: dissatisfaction with wages at all (47,6% of respondents), dissatisfaction with wages in the specialty (27,3% of respondents), lack of work in the specialty in the place of residence (14,3% of respondents), need to earn urgently a substantial amount of money (12,0% of respondents), lack of any work in the place of residence (9,5% of respondents) and other reasons (4,6% of respondents) [10, p. 35]. These data were obtained in the result of sociological survey conducted by the Razumkov Centre that is a non-governmental think tank which carries out different researches of a public policy in a certain spheres.

Regional peculiarities of Ukraine can be viewed through the sociological surveys of different parts of the country. For example, the views expressed during interviews in Ternopil and Ivano-Frankivsk regions have illustrated that low wages and unemployment are the most substantial determinants of labor emigration [11]. The results of the survey are the following: 85% of respondents stressed that “low wages and personal income in Ukraine” is the most important reason for seeking jobs abroad. As very important reasons 54% of respondents mentioned “unemployment”, 24% – “bad housing conditions in Ukraine and low quality of housing and communal services”, 24% – “violation of the people’s civil rights by state, bad governance, corruption, no prospects for positive changes in a country” and 23% of respondents – “no possibilities for making carriers in Ukraine, for implementation creative power, poor psychological climate at the working place”.

Thus, migration processes are caused by the objective social, economic and political factors, as well as by certain regional peculiarities of Ukraine.

Legal regulation of labor migration issues in Ukraine. After Ukraine gained its independence and the implementation of a number of social and political reforms, the economic and social development strategy has been designed. The main aim of this strategy is to create real preconditions for resolving of the major geopolitical objective – Ukraine’s membership in the European Union [12].

Despite the declared policy, instability of the implementation of intrastate economic development of Ukraine interests of a large number of people were violated that gave rise to particularly sensitive and vulnerable groups of Ukrainians who were forced to carry out foreign labor migration to meet personal economic needs. Labor migration, as a social phenomenon that needs normative regulation, is relatively new to the labor law of Ukraine. But regardless of profound social importance to ensure the legal protection of migrant workers from Ukraine who work in other countries, this issue at the legislative level has been neglected.

Nowadays, Ukrainian legislative base for migration includes: the Laws “On immigration” (2001), “On Refugees” (2001), “On Ukrainian citizenship” (2001), The Law “On the legal status of foreigners” (1994, last amended in 2005), the Law “On the State Border Service of Ukraine” (2003), the Law “Amending certain legislation due to the adoption of the Law ‘On the State Border Service of Ukraine’” (2003), international treaties signed by Ukraine – the Convention on the Protection of Human Rights and Basic Freedoms, the Convention on the Status of Refugees (1951) and its Protocol (ratified in 2002).

As we can see, there is no special law that deals with the state policy in the sphere of labor migration, or there is no national law that contains provisions as to the migrant workers’ rights protection or something like that.

The positive moment is that key component of migration legislation – the Concept of migration policy was finally adopted in 2011. The concept aims to ensure effective state migration management and create conditions for sustainable demographic, social and economic development, enhance national security by preventing of uncontrolled migration processes and its consequences, harmonization of national legislation in accordance with the international migration standards, strengthening of social and legal protection of citizens of Ukraine who are working abroad, creating conditions for the implementation of the rights, freedoms and legitimate interests of workers as well as performing their obligations etc [13].

Thus, Ukraine at last has a normative document that establishes the foundations of the country’s migration policy, recognizing its goals, objectives, mechanisms and instruments.

Some aspects of the migration policy are raised in the Strategy for demographic development until 2015, approved by the Resolution of the Cabinet of Ministers № 879 dated of 24.06.2006. It declares the government’s intentions to regulate migration in order to slow down the rates of depopulation, to preserve the quantity and structure of citizens which are able to assimilate the territories and to save the mental integrity of Ukrainian nation. One of the goal of the Strategy for demographic development has been specified as a cutting the scale of illegal labor migration of Ukrainian citizens abroad. Strategy prescribes such instruments to attain this goal: programs of social and professional adaptations for returning migrants, promotion self-employment and small business development, new jobs creation in the depressed regions, training and retraining of the returning migrants, improving accessibility of information on vacancies through a nationwide database, facilitating internal migration of the population, etc [14].

Approaching the performance of its obligations under international agreements, Ukraine ratified the European Convention on the Legal Status of Migrant workers. Still the ILO ILO Migration for Employment Convention № 97 on and ILO Convention № 143 concerning Migrations

in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers remain unratified.

But taking into account the recent signing of Political Part of Ukraine–European Union Association Agreement, Ukraine will fulfill its obligations under international treaties and bring the national legislation into conformity with the requirements of the European Union. The parties of Agreement committed to cooperate and converge policy, legislation, and regulation across a broad range of areas, including equal rights for workers, steps towards visa-free movement of people, the exchange of information and staff in the area of justice etc [15].

According to the provision of the article 15 of the Agreement [16], the parties reaffirm the importance of joint management of migration flows between their territories and shall further develop the comprehensive dialogue on all migration-related issues, including illegal migration, legal migration, smuggling of and trafficking in human beings, as well as the inclusion of migration concerns in the national strategies for economic and social development of the areas from which migrants originate.

In accordance with the relevant Union and national legislation in force, cooperation will, in particular, focus on:

a) tackling the root causes of migration, pursuing actively the possibilities of cooperation in this field with third countries and in international fora;

b) establishing together an effective and preventive policy against illegal migration, smuggling of migrants and trafficking in human beings including how to combat networks of smugglers and traffickers and how to protect the victims of such trafficking;

c) establishing a comprehensive dialogue on asylum issues and in particular on matters related to the practical implementation of the UN Convention of 1951 relating to the Status of Refugees and the Protocol relating to the Status of Refugees of 1967 and other relevant international instruments, as well as ensuring the respect of the principle of ‘non-refoulement’;

d) admission rules, and rights and status of persons admitted, fair treatment and integration of lawfully residing non-nationals etc;

According to the provision of the article 15 of the Agreement, Subject to the laws, conditions and procedures applicable in each Member State and the EU, treatment accorded to workers who are Ukrainian nationals and who are legally employed in the territory of a Member State shall be free of any discrimination based on nationality, as regards working conditions, remuneration or dismissal, compared to the nationals of that Member State.

Additionally, taking into account the labor market situation in the Member States, subject to the legislation and in compliance with the rules in force in the Member States and the EU in the area of mobility of workers:

a) the existing facilities of access to employment for

Ukrainian workers accorded by Member States under bilateral agreements should be preserved and if possible improved;

b) other Member States shall examine the possibility of concluding similar agreements.

Besides, in Annex to Chapter 21 “Cooperation on employment, social policy and equal opportunities” it is stated that Ukraine undertakes to gradually approximate its legislation to the following EU legislation within the stipulated timeframes. And although, migration policy in Ukraine is at the initial stage of its formulation but essential steps forward have been already made.

Conclusions. An overview of different sociological data, legislation and the relevant scientific literature show that labor migration is a complex phenomenon that constantly accompanies globalization processes and may pose a significant threat to national security in case of lack of proper legal regulation

The main determinants of labor migration in Ukraine are the low wages and unemployment. This confirms the fact that without economic development of the vulnerable regions and without extension of employment opportunities at the local labor market Ukrainian migration policy is doomed to failure. The effective management of the economy due to the market is urgent in contemporary circumstances.

The state legal regulation of employment and the labor market in certain directions will help to overcome negative for Ukraine globalization processes and trends, Particular attention must be paid to the necessity to accelerate the process of economy socialization and institutionalization, to ensure sustainable economic growth and quality of life.

Further implementation of international labor and migration standards, as well as a harmonization with the European Union legislation in these spheres will reduce negative consequences of labor migration and contribute to a better protection of migrant workers from Ukraine in countries of their temporary or constant residence.

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